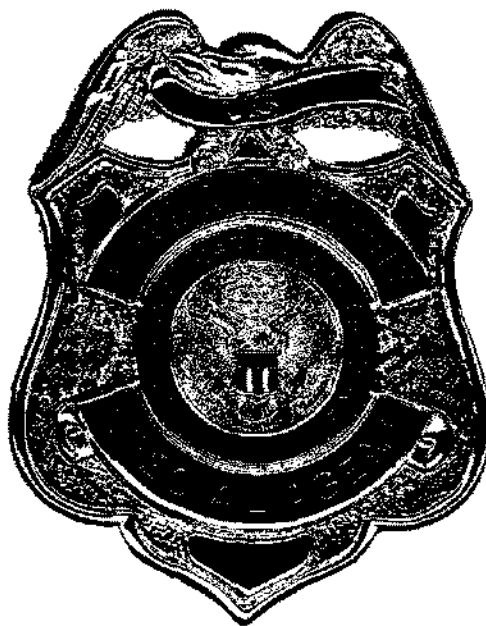


REPORT OF INVESTIGATION

IN03-OIG-LA-0662-S



Office of Inspector General

United States Department of Homeland Security



<i>Case Number</i>	IN03-OIG-LA-0662-S
<i>Case Title</i>	Air and Marine Interdiction Coordination Center
<i>Report Status</i>	Final
<i>Alleged Violation(s)</i>	Misuse of Resources

SYNOPSIS

This report documents the results of an Office of Inspector General (OIG) investigation into allegations that Air and Marine Interdiction Coordination Center (AMICC), Bureau of Immigration and Customs Enforcement (BICE), Department of Homeland Security (DHS) assets were misused in assisting a state law enforcement agency. Specifically, the Texas Department of Public Safety (DPS) requested AMICC to locate an aircraft transporting Texas state legislators from Oklahoma to Texas on May 12, 2003.

On May 15, 2003, Acting Inspector General Clark Kent Ervin received a telephone call from Mark Wallace, Principal Legal Advisor to Michael Garcia, Assistant Secretary Designee for BICE, referring for investigation a matter concerning alleged DHS involvement in a federal effort to find missing Texas state lawmakers. Subsequently, Members of Congress wrote to the OIG requesting an investigation into this matter and requested that several issues described later in this report be addressed by the OIG. The scope of the OIG investigation was limited to the specific issue involving alleged misuse of DHS assets in assisting state law enforcement in locating a reported "missing aircraft." The OIG investigation did not address the actions of the DPS following their request for AMICC assistance, nor did the OIG assess the propriety of AMICC's existing guidelines relating to the rendering of assistance to other law enforcement agencies. The alleged destruction of notes by the DPS was referred to the Federal Bureau of Investigation (FBI), San Antonio, Texas, for their consideration.

The OIG investigation found that DPS did contact the AMICC and reported that they "had a problem," and "could not find this plane" which contained Texas state representatives. The DPS requested DHS to assist them in locating the aircraft. The OIG investigation concluded the assistance rendered by AMICC was limited to not more than forty minutes of telephone calls

Reporting Agent	
Name: [REDACTED]	Signature: [REDACTED]
Title: Supervisory Special Agent	Date: 6/13/03
Approving Official	
Name: Joseph Artes	Signature: [Handwritten Signature]
Title: Special Agent in Charge	Date: 6/13/03

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Redacted for public release pursuant to 5 U.S.C. 552 (b)(2), (6), (7)(C).

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made by an AMICC employee to various Federal Aviation Administration (FAA) and airport representatives in Texas, and a series of conversations with [REDACTED] supervisors. The AMICC personnel involved in this incident described this assistance as a typical request from a law enforcement agency, which reportedly occurs at least thirty times a day and is in compliance with their standard operating procedures. At no time did AMICC launch any aircraft or otherwise use DHS resources to assist the DPS. The telephone calls made by AMICC at the request of DPS involved a nominal use of DHS assets.

AMICC's account of these events was documented on audiotape (and transcript), which was reviewed by OIG investigators and found to be consistent with the statements of AMICC employees involved in the incident. There was every indication that the employee rendering assistance to the DPS on the telephone believed he was searching for a missing aircraft.

DPS officials interviewed by the OIG declined to provide any information identifying the person or persons who requested they contact AMICC for assistance. DPS officials claimed they destroyed all notes, memoranda, or other correspondence related to this incident.

This case is closed with the submission of this report.

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INTRODUCTION

On May 15, 2003, Acting Inspector General Clark Kent Ervin¹ received a telephone call from Mark Wallace, Principal Legal Advisor to Michael Garcia, Assistant Secretary Designee for BICE, referring for investigation a matter concerning alleged DHS involvement in a federal effort to find missing Texas state lawmakers. At this time Wallace advised that his office was in possession of an audiotape related to this matter. (Exhibit 1)

Subsequently, the OIG received three letters from Members of Congress. The first letter, dated May 15, 2003, was from Representative John Conyers, Jr. and other members. The second letter, dated May 21, 2003, was from Representative Lloyd Doggett and other members. The third letter, dated May 22, 2003, was from Senator Joseph Lieberman. All these letters requested the OIG to investigate this matter to determine if DHS assets were misused in attempting to locate the missing Texas state lawmakers. Senator Lieberman's letter also requested that the OIG expand its investigation to include the alleged destruction of documents by the DPS. (Exhibit 2)

The scope of the OIG investigation was limited to the actions of AMICC personnel in rendering assistance to DPS in locating a reported "missing aircraft." This investigation did not address the post incident actions of the DPS or the actions of any other federal agency rendering assistance to DPS. Insofar as the assistance provided by AMICC was *de minimis*, the OIG did not expand the scope of this investigation or investigate the document destruction by DPS. The conduct of DPS was referred to the FBI for whatever action they deemed appropriate.

DETAILS

Allegation: It was alleged that AMICC misused its resources by providing assistance to track and locate an aircraft transporting State of Texas legislators.

On May 20, 2003, the OIG recovered from General Counsel's Office, BICE, audiotapes and a videotape (audio only) relating to the recording of the assistance provided by AMICC, on May 12, 2003. (Exhibit 3)

Charles E. Stallworth, Director, Air and Marine Interdiction (A&MI), BICE, DHS, Washington, D.C., was interviewed and stated that [REDACTED], Texas Department of Public Safety, Austin, Texas, had requested the assistance of AMICC. AMICC attempted to assist DPS in the

¹ On May 16, 2003, Acting Inspector General Clark Kent Ervin recused himself from any participation in this investigation due to his prior employment by the State of Texas, and the possibility he might know one or more of the State of Texas employees involved in this matter. See Exhibit 1.

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location of an aircraft allegedly carrying Texas state lawmakers. According to Stallworth, AMICC acted appropriately and in accordance with agency guidelines in responding to what AMICC, based on information available at the time, believed to be a legitimate law enforcement request for assistance. (Exhibit 4)

██████████ Senior Detection Systems Specialist (DSS), AMICC, BICE, DHS, Riverside (all further references to AMICC are for this site), was interviewed and stated that on May 12, 2003, a call was received from ██████████ requesting assistance in determining the location of an aircraft believed to be overdue. ██████████ assigned the call to ██████████ DSS, AMICC, to provide assistance in locating the aircraft.

According to ██████████ AMICC receives 30 to 40 calls daily requesting assistance as a matter of public safety from individuals, localities, states, etc. ██████████ provided a copy of the "AMICC Training and Operations Manual," which states, in part, that when resources allow, support will be provided to assist federal, state, and local law enforcement agencies for humanitarian efforts.

██████████ concurred with the steps ██████████ took in an attempt to locate the aircraft. (Exhibits 5, 6)

██████████ was interviewed and stated that on May 12, 2003, ██████████ was assigned to assist ██████████ in locating an aircraft with Texas officials on board. ██████████ attempted to locate the aircraft but was unsuccessful. ██████████ advised ██████████ of results and related ██████████ could contact ██████████ the Dallas Fort Worth Airport to request search and rescue. At that time, ██████████ declined ██████████ offer to be put in touch with FAA to initiate a search and rescue. However, ██████████ later called ██████████ back and requested the information on how ██████████ could go about requesting a search and rescue. ██████████ provided ██████████ with the contact information for Ft. Worth Center to initiate the search and rescue. (Exhibits 7, 8)

██████████ DSS, AMICC, was interviewed and stated that on May 12, 2003, ██████████ received a call from the FAA, as a result of a call placed to them earlier by ██████████ explaining the FAA had no contact with the alleged missing aircraft. ██████████ provided the information to ██████████ (Exhibit 9)

██████████ and ██████████ AMICC, stated that all calls on the operations floor, incoming and outgoing, are recorded. (Exhibit 10)

██████████ AMICC, was on the operations floor at AMICC, on May 12, 2003, when ██████████ briefed ██████████ about the alleged missing aircraft and ██████████ attempts to locate the aircraft. ██████████ concurred with the actions ██████████ had taken in attempting to locate the aircraft. AMICC assists in looking for downed aircraft for humanitarian reasons. In this specific case, AMICC was assisting a law enforcement agency. It is always the policy to assist law enforcement agencies that are attempting to locate an aircraft. On the average, this type of assistance occurs "30 to 40 times per day," according to ██████████ (Exhibit 11)

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[REDACTED] Special Crimes Service, Texas Department of Public Safety, Austin, Texas, was interviewed and stated [REDACTED] knew that the U.S. Customs Service (referred to here as AMICC) tracked airplanes, so [REDACTED] made the contact. [REDACTED] stated that several individuals, whom [REDACTED] would not identify, requested [REDACTED] look for the airplane. [REDACTED] did not recall with whom at AMICC [REDACTED] had spoken. According to [REDACTED] AMICC attempted to locate the airplane and ultimately advised [REDACTED] they could not locate it. [REDACTED] believed that the total time the AMICC employee assisted [REDACTED] was 15 minutes. (Exhibit 12)

[REDACTED] AMICC, was interviewed and stated [REDACTED] began receiving calls from newspapers, news services, and television news programs, on May 13, 2003. Additionally, [REDACTED] received a call from Congressman Ken Calvert's office which expressed shock that AMICC was involved in looking for the aircraft. [REDACTED] referred the callers to the public affairs office for BICE, DHS, Washington, D.C. [REDACTED] stated [REDACTED] had not had any requests from Congress or the Administration relating to the aircraft. (Exhibits 13, 14)

The OIG attempted to interview [REDACTED] DPS, on May 22, 2003, relating to alleged missing notes prepared by [REDACTED] in [REDACTED] attempt to locate the missing aircraft. At that time, [REDACTED] stated [REDACTED] was unavailable for an interview. It was later determined that an interview of [REDACTED] was not necessary due to the scope of this investigation. (Exhibit 15)

[REDACTED] FBI, San Antonio, Texas, was interviewed and stated the FBI was not interested in investigating the alleged destruction of notes and documents by the Texas DPS related to the Texas state lawmakers. (Exhibit 16)

Joseph Bendig, Director, AMICC, was interviewed in response to comments attributed to him in an article appearing in the Washington Post newspaper, dated June 7, 2003. According to Bendig, his comments were taken out of context. Bendig stated the reporter asked, "How often does AMICC get calls from law enforcement for this type of assistance?" Bendig construed this to mean requests for assistance to locate a lost aircraft with politicians on board and stated that such calls are unusual. Bendig further clarified that AMICC does get calls from law enforcement, but not necessarily calls to locate aircraft carrying politicians. (Exhibit 17)

[REDACTED] was interviewed to determine if AMICC verifies the identity of callers requesting assistance. According to [REDACTED] when requests for information are received by AMICC, they call back the requestor to verify their identity. In this instance, when the call for assistance came in on May 12, 2003, a call-back procedure was not deemed necessary. Rather, [REDACTED] noted that the AMICC phone system displayed that the call originated from a "Texas Government" telephone extension. [REDACTED] believed that further verification was unnecessary. (Exhibit 18)

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EXHIBITS

<u>NUMBER</u>	<u>DESCRIPTION</u>
1	Memorandum of Acting Inspector General Clark Kent Ervin, dated May 16, 2003, documenting his May 15, 2003, conversation with Mark Wallace, BICE, and his refusal.
2	Letter from Representative John Conyers, Jr. to the Inspector General, dated May 15, 2003. Letter from Representative Lloyd Doggett to Lisa Redman, dated May 21, 2003. Letter from Senator Joseph L. Lieberman to Lisa Redman, dated May 22, 2003.
3	Memorandum of Activity, Receipt of AMICC Audiotapes and Videotape (audio only), dated May 20, 2003.
4	Memorandum of Activity, Interview of Charles E. Stallworth, BICE-A&MI, dated May 21, 2003.
5	Memorandum of Activity, Interview of [REDACTED], AMICC, dated May 22, 2003.
6	Memorandum of Activity, Fax from [REDACTED], AMICC, dated May 23, 2003.
7	Memorandum of Activity, Interview of [REDACTED], AMICC, dated May 26, 2003.
8	Memorandum of Activity, Transcript of AMICC Recording, dated May 21, 2003.
9	Memorandum of Activity, Interview of [REDACTED], AMICC, dated May 27, 2003.
10	Memorandum of Activity, Interview of [REDACTED] and [REDACTED], AMICC, dated May 23, 2003.
11	Memorandum of Activity, Interview of [REDACTED], AMICC, dated May 23, 2003.
12	Memorandum of Activity, Interview of [REDACTED] DPS, dated May 22, 2003.

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- 13 Memorandum of Activity, Interview of [REDACTED] AMICC, dated May 27, 2003.
- 14 Memorandum of Activity, Interview of [REDACTED] AMICC, dated May 23, 2003.
- 15 Memorandum of Activity, Contact with [REDACTED], DPS, dated May 22, 2003.
- 16 Memorandum of Activity, Interview of [REDACTED] FBI, dated May 28, 2003.
- 17 Memorandum of Activity, Interview of Joseph Bendig, AMICC, dated June 9, 2003.
- 18 Memorandum of Activity, Interview of [REDACTED] AMICC, dated June 9, 2003.

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